BANGALORE ELECTRICITY SUPPLY COMPANY LIMITED

(Wholly owned by Government of Karnataka undertaking)

ESTIMATE No: BESCOM /2023-24/SE0078/CALL-2 Dated: 08.12.2023

GENERAL CONDITIONS OF CONTRACT

FOR

Comprehensive Annual maintenance contract of 120 KVA NBS installed at BICC1 and BICC2 Control Center's (HSR & Rajajinagar) DAS,BESCOM, Bangalore for a period of One Year.

Issued By

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Section-II

General Conditions of Contract

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A. INTRODUCTION

2.1. DEFINITIONS:

'**The Contract**' means the **Agreement** entered into between Owner and Agency/Bidder as per the Contract Agreement signed by the Parties including all attachments, annexures and appendices there to and all Documents incorporated by reference therein.

'**Owner**' shall mean the **Bangalore Electricity Supply Company Limited (BESCOM)** and shall include their Legal Representatives, Successors and Assigns.

'Contractor/Selected bidder/Agency/Bidder' or '**Agency**' shall mean the **Bidder** whose Bid will be accepted by the **Owner** for the Award of the Works and shall include such successful Bidder's Legal Representatives, Successors and Permitted Assigns.

'**Specifications**' shall mean the Technical Specifications and Requirements of the Bidding Document forming a Part of the Contract and such other Schedules and Drawings as may be mutually agreed upon.

'**Sub-Contractor'** shall mean the person named in the Contract for any part of the Works or any person to whom any part of the Contract has been sublet by the Contractor.

'**Control Centre**' shall mean and include the BESCOM Integrated Control Centre located at HSR Layout and Rajajinagar, Bangalore.

'Engineer' shall mean the officer appointed by the BESCOM to act as Engineer from time to time for the purpose of the Contract.

'Works' shall mean and include all the activities to be carried out as per the detailed scope of the work.

The term 'Contract Price' shall mean the Lump Sum Price comprised of Unit Price quoted by the Agency/Bidder (including applicable taxes) in his Bid with additions and/or deletions as may be agreed and incorporated in the Letter of Award, for the entire Scope of the Works.

Void

'Notice of Award of Contract'/'Letter of Award /Letter of Intent' shall mean the Official Notice issued by the Owner/Employer notifying the contractor/Selected bidder/Agency/Bidder that his Bid has been accepted.

'**Date of Contract**' shall mean the date on which Notice of Award of Contract/ Letter of Award has been issued.

'Month' shall mean the Calendar Month. **'Day'** or **'Days'** unless herein otherwise expressly defined shall mean Calendar Day or Days of 24 Hours each. '**A Week'** shall mean continuous period of Seven (7) Days.

'**Writing**' shall include any Manuscript, Type Written, Computer Generated or Printed Statement, under or over Signature and/or Seal, as the case may be.

Words imparting the **Singular only** shall also include the **Plural** and vice-versa where the Context so requires.

Words imparting **'Persons'** shall include Firms, Companies, Corporation and Associations or Bodies of individuals, whether incorporated or not.

"Bidding Documents": Means Information & Instructions, General Conditions of Contract, and other Annexures included in Sections IFB,ITB, GCC.

2.2. APPLICATION:

These General Conditions shall apply to the extent that they are not superseded by provisions in other parts of the Contract.

2.3. STANDARDS:

The maintenance services provided (for maintaining NBS) under this contract shall confirm to the ITB clause 2.

The spares supplied under this Contract shall confirm to the standard Specifications of the OEM .

2.4. LANGUAGE AND MEASURES:

All Documents pertaining to the Contract including Specification, Schedules, Notices, Correspondence, Routine Operation Instructions, Organograms/Drawings or any other Writing shall be written in English language. The Metric System of measurement shall be used exclusively in the Contract.

2.5. CONTRACT DOCUMENTS:

The term Contract Documents shall mean and include the following which shall be deemed to form an integral part of the Contract:

a) Invitation for bids, Instructions to Bidders, General Terms and Conditions of Contract, Annexures provided with the bid document.
b) Contractor/selected bidder/Agency/Bidder's Bid Proposal and the Documents attached thereto including the Letters of Clarifications thereto between the Contractor/selected bidder/Agency/Bidder's and the Owner prior to the Award of Contract except to the extent of repugnancy.
c) All the material, Literature, Data and Information of any sort given by the Agency/Bidder along with the Bid, subject to the approval of the Owner.
d) Letter of Award and any agreed variations of the Conditions of the Documents and General Terms and Conditions of Contract, if any.
e) In the event of any conflict between the above mentioned Documents, the matter shall be referred to the Authorised Personnel from the BESCOM Management whose decision shall be considered as final and binding upon the Parties.

2.6. USE OF CONTRACT DOCUMENTS AND INFORMATION:

a) The Contractor/Selected bidder/Agency/Bidder shall not without the Owner's prior written consent, disclose the Contract, or any provision thereof, or any Specification, or Information furnished by or on behalf of the Owner in connection therewith, to any Persons other than a Person employed by the Contractor/Selected bidder /Agency/Bidder in the Performance of the Contract. Disclosure to any such employed Persons shall be made in confidence and shall extend only so far, as may be necessary for purposes of such Performance.

b) The Contractor/Selected bidder/Agency/Bidder shall not, without the Owner's prior written consent, make use of any Document or information enumerated in various Contract Documents except for purpose of performing the Contract.

c) The Contractor/Selected bidder Agency/Bidder shall not communicate or use in Advertising, Publicity, Sales Releases or in any other Medium, Photographs or other reproduction of the Works under this Contract, or descriptions of the Site, Dimensions, Quantity, Quality or other information, concerning the Works unless prior written permission has been obtained from the Owner.

2.7. LAW GOVERNING OF CONTRACT:

The Contract, shall in all respects be constructed and governed according to Indian Laws. The Courts of Bangalore shall have exclusive jurisdiction in all matters arising under this Contract.

2.8. MANNER OF EXECUTION OF CONTRACT:

The Contract, unless otherwise agreed to, shall be signed within 15 days of acceptance of the Letter of Intent, at the Office of the Owner at Bangalore or other place as mentioned in the Letter of Intent on a date and time to be mutually agreed to. The Agency/Bidder shall provide for signing of the Contract, Performance Guarantee, appropriate Power of Attorney and other requisite Materials. In case the Contract is to be signed beyond the stipulated time, the Bid Security submitted with the proposal shall be extended accordingly.

The Agreement shall be signed in Two Originals and the Contractor/Selected bidder/Agency/Bidder shall be provided with one signed Original copy and the Owner will retain the other.

Subsequent to signing of the Contract, the Contractor/Selected Bidder/Agency/Bidder at his own Cost shall provide the Owner/Employer with at least ten (10) true Bounded Copies of Agreement, PBG, tender document etc., within fifteen (15) days after the signing of the Contract.

2.9. ENFORCEMENT OF TERMS:

The failure of either Party to enforce at any time any of the provisions of this contract or any rights in respect thereto or to exercise any option therein provided, shall in no way be construed to be a waiver of such provisions, rights or options or in any way to affect the validity of the Contract. The exercise by either Party of any of its rights herein shall not preclude or prejudice either Party from exercising the same or any other right it may have under the Contract.

2.10. COMPLETION OF CONTRACT:

Unless otherwise terminated under the provisions of any other relevant Clause, this Contract shall be deemed to have been completed on the expiry of the contract Period.

2.11. EXTENSION OF CONTRACT:

The contract shall be extendable for further one more year on mutual Agreement by both the parties (Employer and Agency). The Performance Bank Guarantee shall be extended for period of more than 90 days after the extension period of Contract as agreed upon.

B. GUARANTEES & LIABILITIES

2.12. EFFECTIVENESS OF CONTRACT:

The Contract shall be considered as having come into force from the date of issue of award.

2.13. LIQUIDATED DAMAGES:

a) In case agency fails to provide the services as stipulated in the Scope of work/work award/Technical Specifications, a penalty at the rate of ½% per week subject to a maximum of 10% of the contract/ award amount shall be levied on the agency.
b) The payment of liquidated damages shall not in any way relieve the Agency/Bidder from any of its obligation and liabilities under the Contract.

2.14. DEFENSE OF SUITS:

If any action in Court is brought against the Bidder for the failure, omission or neglect on the part of the Contractor/Selected bidder/Agency/Bidder to perform any Acts, Matters, Covenants or things under the Contract, or for Damage or injury caused by the alleged omission or negligence on the part of the Contractor/Selected bidder/Agency/Bidder or in connection with any Claim based on lawful demands of Workmen, Suppliers or Employees, the Contractor/Selected bidder/Agency/Bidder shall in all such cases indemnify and keep the Owner, and/or his Representative, harmless from all losses, Damages, expenses or Decrees arising of such action.

2.15. LIMITATION OF LIABILITIES:

The final Payment by the Owner in pursuance of the Contract shall mean the release of the Contractor/Selected bidder/Agency/Bidder from all his liabilities under the Contract. Such final Payment for the spares supplied by the bidder shall be made only at the end of the Guarantee/ Warranty Period, and till such time as the Contractual liabilities and responsibilities of the Contractor/Selected bidder/Agency/Bidder, shall prevail. All other Payments made under the Contract shall be treated as on account Payments.

2.16. OWNER DECISION:

In respect of all matters which are left to the decision of the Owner including the granting or with-holding of the Certificates, the Owner shall, if required to do so by the Contractor/Selected bidder/Agency/Bidder, give in writing a decision thereon.

If, in the opinion of the Contractor/Selected bidder Agency/Bidder, a decision made by the Owner is not in accordance with the meaning and intent of the Contract, the Agency/Bidder may file with the Owner, within fifteen (15) days after receipt of the decision, a written objection to the decision. Failure to file an objection within the allotted time will be considered as an acceptance of the Owner decision and the decision shall become final and binding.

It is the intent of the Agreement that there shall be no delay in the execution of the Works and the decision of the Owner as rendered shall be promptly observed.

2.17. CHANGE OF REQUIREMENT:

During the execution of the Contract, the Owner reserves the right to increase or decrease the requirement in spares under the Contract but without any change in unit Price or other Terms and Conditions. The Agency/Bidder shall provide the same, if requested, at the same Unit Rates of the Contract.

The base Unit Rates, as identified in the Contract shall however remain constant during the currency of the Contract.

2.18. CERTIFICATE NOT TO AFFECT RIGHT OF OWNER AND LIABILITY OF AGENCY/BIDDER:

No interim Payment Certificate of the Owner, nor any Sum paid on account by the Owner, nor any extension of time for execution of the Contract granted by the Owner shall affect or prejudice the rights of the Owner against the Agency/Bidder or relieve the Agency/Bidder of his obligation for the due Performance of the Contract, or be interpreted as approval of the Works done or of the Equipment furnished and no Certificate shall create liability for the Owner to pay for alterations, amendments, variations or additional Works not Ordered, in writing, by

the Owner or discharge the liability of the Agency/Bidder for the Payment of Damages whether due, ascertained, or certified or not or any Sum against the Payment of which he is bound to indemnify the Owner, nor shall any such Certificate nor the acceptance by him of any Sum paid on account or otherwise affect or prejudice the rights of Owner against the Agency/Bidder.

C. CONTRACT SECURITY AND PAYMENTS

2.19. CONTRACT PERFORMANCE GUARANTEE/ GUARANTEE:

a) The successful Bidder shall enter in to an agreement in the prescribed format on stamp paper of Rs. 200/-. The Successful Bidder shall furnish Performance Guarantee to the Owner within Fifteen (15) from the date of receipt of LOI.

b) The Successful Bidder to whom the Contract is awarded, shall be required to furnish the Contract Performance Guarantee in the form of a Bank Guarantee in favour of the Owner as Contract Performance Guarantee for faithful Performance of the Contract in accordance with the Terms and Conditions specified in the Contract. The Guarantee amount shall be equal to TEN percent (10%) of the Contract Price and the Guarantee shall be valid till expiry of 27months(**90 days after the end of contract Period+ 12 months warranty period for the spares replaced)**.

c) The Contract Performance Guarantee amount shall be unconditional and irrevocable and the amount therein shall be payable to the Owner on demand without any condition whatsoever.

d) The Performance Bank Guarantee shall be discharged / returned by Owner upon being satisfied that there has been due performance of the obligations of the Bidder under the contract. However, no interest shall be payable on the Performance Bank Guarantee.

e) In the event of the bidder being unable to service the contract for whatever reason, the Owner shall invoke the PBG. The Owner shall notify the Bidder in writing of the exercise of its right to receive such compensation within 14 days, indicating the contractual obligation(s) for which the Bidder is in default.

f) The Owner shall also be entitled to make recoveries from the Bidder bills, PBG or any other payment due, in case of any error/ omission on bidder's part.

g) The PBG shall be furnished in the format prescribed by the employee (shall be provided on receipt of LOI by the successful bidder).

2.20. PAYMENT

a) The Payment to the Contractor/selected bidder/Agency/Bidder for the Performance of the Contract will be made by the Owner as per

the guidelines and Conditions specified herein and as per the payment terms stipulated vide clause "Payment Terms". All Payments made during the Contract shall be on account Payments only.

b) All Payments under the Contract shall be in Indian Rupees only.

c) The Contract Price Schedule shall remain constant throughout the period of execution of Contract.

2.20.1 PAYMENT TERMS:

a) The payment towards annual maintenance contract will be made at the end of every half year after successful completion of maintenance period.

b) The payment will be made by AGM (F&C) DAS section duly after the submission of certificates of fulfilling AMC works from the concerned Manager(DAS), AGM(DAS), DGM(DAS) with counter signature from GM (DAS).

c) The selected bidder shall raise and submit a Bi-annual maintenance invoice in triplicate to the General Manager (DAS) along with report containing completion maintenance activity as per the schedule.

2.21. WARRANTY

a) The Contractor shall warrant that the spares will be new, unused and in accordance with the Contract documents and free from defects in material and workmanship for a period of 12 months from the date of commissioning of the material or 18 months from date of supply whichever is earlier.

b) The cost of any special or general overhaul rendered necessary during the maintenance period due to defects in the equipment or defective work carried out by the Contractor, it shall be borne by the Contractor.

c) The acceptance of the equipment by the Manager/Engineer shall in no way relieve the Contractor of his obligations under this clause.

2.22. TAXES, PERMITS & LICENCES

Ref ITB clause 14

2.23. TIME – THE ESSENCE OF CONTRACT

The timelines for carrying out regular maintenance activities including Bi-annual maintenance as detailed in the ITB clause no 2 The important objective is to make sure the smooth functioning of NBS without any deviation from standard NBS of functioning parameters.

In case of NBS failing to perform the contractor should provide the telephonic/remote service within four hours from the time of report and if issue persist the onsite support should be within 24 hours from the time

of report. The contractor shall organize and engage his workers to complete the works within stipulated time.

The Time and the Date of Completion of the Contract as stipulated in the Contract by the Owner without or with modifications, if any, and so incorporated in the Letter of Award, shall be deemed to be the essence of the Contract. The Agency/Bidder shall so organize his resources and provide maintenance services as in the in Clause 2 of Instructions to Bidders not later than the agreed date.

2.24. DEDUCTIONS FROM CONTRACT PRICE:

All costs, damages or expenses which the Owner may have paid, for which under the Contract the Contractor is liable, will be claimed by the Owner. All such claims shall be billed by the Owner to the Contractor regularly as and when they fall due. Such bills shall be supported by appropriate and certified vouchers or explanations, to enable the Contractor to properly identify such claims. Such claims shall be paid by the Contractor within thirty (30) days of the receipt of the corresponding bills and if not paid by the Contractor within the said period, the Owner may then deduct the amount, from any moneys due or becoming due by him to the Contractor under the Contract or may be recovered by sections of Law or otherwise.

D. RISK DISTRIBUTION

2.25. INSURANCE

a) The Contractor at his cost shall arrange, secure and maintain all insurance as may be pertinent to the Works and obligatory in terms of law to protect his interest and interests of the Owner against all perils. The form and the limit of such insurance as defined herein together with the under-writer in each case shall be acceptable to the Owner. However, irrespective of such acceptance, the responsibility to maintain adequate insurance coverage at all time during the period of Contract shall be of Contractor alone. The Contractor's failure in this regard shall not relieve him of any of his contractual responsibilities and obligations.

b) Any loss or damage to the equipment during handling, transportation, storage, erection, putting into satisfactory operation and all activities to be performed till the successful completion of commissioning/replacement of the equipment/spares shall be to the account of the Contractor. The Contractor shall be responsible for preference of all claims and make good the damages or loss by way of repairs and/or replacement of the equipment, damaged or lost.

c) The perils required to be covered under the insurance shall include, but not be limited to fire and allied risks, miscellaneous accidents (erection risks) workman compensation risks, loss or damage in

transit, theft, pilferage, riot and strikes and malicious damages, civil commotion, weather conditions, accidents of all kinds, etc. The scope of such insurance shall be adequate to cover the replacement/reinstatement cost of the equipment for all risks up to and including delivery of goods and other costs till the equipment is delivered at Site. The insurance policies to be taken should be on replacement value basis and/or incorporating escalation clause. Notwithstanding the extent of insurance cover and the amount of claim available from the underwriters, the Contractor shall be liable to make good the full replacement/rectification value of all equipment/materials and to ensure their availability as per project requirements.

d) All costs on account of insurance liabilities covered under the Contract will be on Contractor's account and will be included in Contract Price.

2.26. LIABILITY FOR ACCIDENTS AND DAMAGES:

Under the Contract, the Contractor shall be responsible for loss or accidents which might arise owing to non–observation of standard safety requirements by its staff during preventive maintenance activities or spare replacement activities of NBS

2.27. TERMINATION OF THE CONTRACT

The Contract is liable for termination on following grounds:

1. Deficiency of services
2. Breach of any terms of the contract

The company shall exercise its discretionary powers on the following:

a) Recover from the Agency the liquidated damages and penalty, as per the contract
b) Obtain above services elsewhere, after giving the notice to the service provider on account and at the risk of the service provider, such services not so provided without cancelling the Contract.
c) To cancel the work award.
d) To black list or not to consider future offers.
e) Forfeit the performance bank guarantee furnished on non-performance of the contract as well as any dues payable to the employer by the way of penalty and liquidated damages.

The decision of the Owner shall be final as regards the acceptability or otherwise of Manpower supplied.

The breach of agreement of any clause or clauses as stated above is liable for termination of agreement by giving Fifteen (15) days' notice.

2.28. FORCE MAJEURE:

Force Majeure is herein defined as any cause which is beyond the control of the Agency/Bidder or the Owner as the case may be, which they could

not foresee or with a reasonable amount of diligence could not have foreseen and which substantially affects the Performance of the Contract, such as:

a) Natural Phenomena, including but not limited to Floods, Droughts, Earthquakes and Epidemics.

b) Acts of any Government, domestic or foreign, including but not limited to War, declared or undeclared, Priorities, Guarantees, and Embargoes. Provided either Party shall, within fifteen (15) days from the occurrence of such a cause, notify the other in writing of such causes.

The Agency/Bidder or the Owner shall not be liable for delays in performing his obligations resulting from any Force Majeure cause as referred to and/or defined above. The date of Completion of Contract will subject to hereinafter provided, is extended by a reasonable time even though such cause may occur after Agency/Bidder's Performance of obligation has been delayed due to other causes.

Force majeure shall not include any event which is caused by the negligence or intentional action of a party or employees, or by a failure to observe good engineering practices.

Force Majeure shall not include insufficiency of funds of failure to make any payment required hereunder.

2.29. SUSPENSION OF CONTRACT:

a) The Owner reserves the right to suspend and reinstate execution of the whole or any part of the Contract without invalidating the provisions of the Contract. Orders for suspension or reinstatement of the Works will be issued by the Owner to the Agency/Bidder in writing. The time for Completion of the Contract will be extended for a period equal to duration of the suspension.

b) Any necessary and demonstrable Cost incurred by the Agency/Bidder as a result of such suspension of the Works will be paid by the Owner, provided such Costs are substantiated to the satisfaction of the Owner. The Owner shall not be responsible for any liabilities if suspension or delay is due to some default on the part of the Agency/Bidder or his Sub-Agency/Bidder.

2.30. AGENCY'S DEFAULT

a) If Agency/Bidder shall fail to execute the Contract leads to breach of agreement as stated in Clause 2.28 “Termination of Contract” and accordingly the Contract is liable for termination by giving Fifteen (15) days’ notice by Owner.

b) In addition, such action by the Owner as aforesaid shall not relieve the Agency/Bidder of his liability to pay Liquidated Damages for

delay in Completion of Contract as defined under the clause "Liquidated damages" of this Section.

c) Such action by the Owner as aforesaid the termination of the Contract under this Clause shall not entitle the Agency/Bidder to reduce the value of the Contract Performance Guarantee nor the time thereof. The Contract Performance Guarantee shall be valid for the full value as mentioned in Performance Guarantee Clause and till the period of 90 days after the completion the Contract.

2.31. TERMINATION OF CONTRACT ON OWNER'S INITIATIVE

The Owner reserves the right to terminate the Contract either in part or in full due to reasons other than those mentioned under clause entitled 'Contractor's Default'. The Owner shall in such an event give fifteen (15) days' notice in writing to the Contractor of his decision to do so.

The Contractor upon receipt of such notice shall discontinue the work on the date and to the extent specified in the notice, make all reasonable efforts to obtain cancellation of all orders and Contracts to the extent they are related to the work terminated and terms satisfactory to the Owner, stop all further sub-contracting or purchasing activity related to the work terminated.

In the event of such a termination the Contractor shall be paid compensation, equitable and reasonable, dictated by the circumstances prevalent at the time of termination.

If the Contractor is an individual or a proprietary concern and the individual or the proprietor dies and if the Contractor is a partnership concern and one of the partners dies then unless the Owner is satisfied that the legal representatives of the individual Contractor or of the proprietor of the propriety concern and in the case of partnership, the surviving partners, are capable of carrying out and completing the Contract the Owner shall be entitled to cancel the Contract as to its incomplete part without being in any way liable to payment of any compensation to the estate of deceased Contractor and/or to the surviving partners of the Contractor's firm on account of the cancellation of the Contract. The decision of the Owner that the legal representatives of the deceased Contractor or surviving partners of the Contractor's firm cannot carry out and complete the Contract shall be final and binding on the parties. In the event of such cancellation the Owner shall not hold the estate of the deceased

2.32. LAW, JURISDICTION, DISPUTES RESOLUTION AND ARBITRATION

a) Party claiming that a Dispute has arisen under this Agreement must give the other Party a written notice of the particulars of the Dispute.

b) Any dispute(s) or difference(s) arising out of or in connection with the Contract shall, to the extent possible, be settled amicably between the Parties.

c) If the party fails to resolve such a dispute or difference by mutual consultation within thirty (30) days from the commencement of such dispute and difference, either party may require that the dispute be referred to arbitration under the Arbitration and Conciliation Act, 1996 (Indian) and subsequent Amendments made thereon, to be adjudicated by a sole arbitrator to be appointed by mutual agreement of both the parties and the award of the arbitrator shall be final and conclusive and binding upon both the Parties. (The date of commencement of the dispute shall be taken from the date when this clause reference is quoted by either party in a formal communication clearly mentioning existence of dispute or as mutually agreed).

d) The place of arbitration shall be in Bangalore. The arbitral procedure shall be conducted in English language.

e) The cost of arbitration including the fees of arbitrator shall be borne by both the parties equally.

f) During the settlement of disputes and Arbitration proceedings, both parties shall be obliged to carry out their respective obligations under the contract.

g) The award of the arbitrator shall be final and conclusive and binding upon the parties.

h) The courts of Bangalore only shall have the exclusive jurisdiction to deal with any issues arising out of this agreement.

E. RESOLUTION OF DISPUTES

2.33. SETTLEMENT OF DISPUTES:

Any disputes or difference or claim arising out of, or in connection with, or relating to the present contract or the breach, termination or invalidity thereof, shall in all respects be constructed and governed according to Indian Laws. The Courts of Bangalore shall have exclusive jurisdiction in all matters arising under this Contract

S/d
General Manager
DAS Section, BESCOM.